

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

KF TEA USA INC. and KF TEA FRANCHISING LLC,

Plaintiffs,

-against-

TEA N' BOBA ENTERPRISES LLC, TOAN VAN
NGUYEN and VY NGUYEN,

Defendants.

Civil Action No.

JURY TRIAL DEMANDED

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

Pursuant to Rule 65 of the Federal Rules of Civil Procedure, Plaintiffs KF Tea USA Inc. and KF TEA FRANCHISING LLC (collectively "Plaintiffs") respectfully move this Court for a temporary restraining order and preliminary injunction restraining and enjoining Defendants Tea N' Boba Enterprises LLC, Toan Van Nguyen and Vy Nguyen (collectively "Defendants") and all persons acting in concert with Defendants or purporting to act on their behalf or in active concert or in participation with Defendants, including, but not limited to, their agents, servants, employees, attorneys, successors, and assigns, who receive notice of such injunction either directly or indirectly, from their willful infringement and counterfeiting by using the substantially identical KUNG FU BOBA mark to Plaintiffs' incontestable, federally registered KUNG FU TEA® Trademarks for the same restaurant services and tea-based flavored drinks and beverages as Plaintiffs' KUNG FU TEA® branded franchised business, from otherwise willfully infringing Plaintiffs' KUNG FU TEA® Trademarks, from falsely designating the origin, sponsorship, or affiliation of Defendants' goods or services; from otherwise unfairly competing with Plaintiffs; from falsely advertising KUNG FU TEA® branded tea-based flavored beverages for purchase;

and from failing to comply with Defendants' termination obligations in material breach of a Franchise Agreement with Plaintiffs, in any manner whatsoever, including by restraining and enjoining Defendants from continuing to operate Defendants' business located at 3910 Wayne Avenue #102, Wichita Falls, Texas 76308 in the sale of oriental style teas and other drinks to consumers for consumption and such sales comprise more than five percent of such business's revenues or any such business within five miles of this address or of any KUNG FU TEA® shop anywhere in the world for a period of two years from the termination date of March 21, 2023 of the Franchise Agreement between Plaintiff KFTF and VTVC.

Unless this motion is granted, Plaintiffs will suffer immediate and irreparable loss, damage, or injury as a result of Defendants' actions before a hearing can be had on the merits, as is explained in more detail in the Verified Complaint and in the Memorandum filed in support of this Motion. Plaintiffs do not have an adequate remedy at law for this loss, damage, or injury.

There is a substantial likelihood that Plaintiffs will prevail on the merits of their claims against Defendants. A balancing of the equities and a consideration of the public interest strongly favors granting temporary and preliminary injunctive relief. Defendants have no legally protected interest in infringing upon Plaintiffs' KUNG FU TEA® Trademarks, or otherwise engaging in unfair competition against Plaintiffs, and any hardship imposed upon Defendants due to the brief delay to determine the lawfulness of their adoption of an infringing mark under the Lanham Act and operation of an unauthorized restaurant in violation and material breach of the termination obligations of their Franchise Agreement with Plaintiffs is, at best, slight.

In further support of this Motion, Plaintiffs rely upon and file herewith their Verified Complaint, the Memorandum in support of this Motion, and the Declarations and Exhibits included in the Appendix filed with the Verified Complaint and Memorandum. Plaintiffs also file herewith a [Proposed] Temporary Restraining And Show Cause Order, to provide notice to Defendants to appear at a hearing on Plaintiffs' Motion for Temporary Restraining Order and a [Proposed] Temporary Restraining Order should Plaintiffs prevail on their Motion. Plaintiffs' counsel will provide

Defendants with copies of the Verified Complaint and this Motion, Memorandum and accompanying Appendix immediately after this Motion is filed, and will also advise Defendants that Plaintiffs have requested the Court to hold a hearing on this Motion.

December 14, 2023

Respectfully submitted,

/s/Abelino “Abel” Reyna

Abelino “Abel” Reyna

Bar # 24000087

Patterson & Sheridan LLP

729 Washington Avenue, Suite 200

Waco, Texas 76701

(Tel): 254-777-5248

(Fax): 877-777-8071

(email): areyna@pattersonsheridan.com

Tony V. Pezzano

To Be Admitted Pro Hac Vice

Tony.Pezzano@offitkurman.com

Matthew D. Asbell

To Be Admitted Pro Hac Vice

Matthew.asbell@offitkurman.com

Chintan A. Desai

To Be Admitted Pro Hac Vice

Chintan.desai@offitkurman.com

Offit Kurman, P.A.

590 Madison Ave, 6th Floor

New York, NY 10022

(Tel): 212-545-1900

(Fax): 212-545-1656

Attorneys for Plaintiffs KF Tea USA Inc. and KF Tea Franchising LLC

CERTIFICATE OF CONFERENCE

I hereby certify that a Conference was NOT conducted prior to the filing of the foregoing PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION due to Defendants not having an attorney of record at the time of filing and Plaintiffs are not aware of any attorney representing the Defendants at this time. It is Plaintiffs understanding that the foregoing Motion is deemed OPPOSED.

/s/Abelino "Abel" Reyna
Abelino "Abel" Reyna
Bar # 24000087
Patterson & Sheridan LLP
729 Washington Avenue, Suite 200
Waco, Texas 76701
(Tel): 254-777-5248
(Fax): 877-777-8071
(email): areyna@pattersonsheridan.com

Tony V. Pezzano
To Be Admitted Pro Hac Vice
Tony.Pezzano@offitkurman.com

Matthew D. Asbell
To Be Admitted Pro Hac Vice
Matthew.asbell@offitkurman.com

Chintan A. Desai
To Be Admitted Pro Hac Vice
Chintan.desai@offitkurman.com
Offit Kurman, P.A.
590 Madison Ave, 6th Floor
New York, NY 10022
(Tel): 212-545-1900
(Fax): 212-545-1656

Attorneys for Plaintiffs KF Tea USA Inc. and KF Tea Franchising LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2023, I electronically filed the foregoing **PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** with the Clerk of the Court using the CM/ECF system and I also served the following by registered service of process and email:

Toan Van Nguyen, Owner
Vy Nguyen, Managing Member
Tea N' Boba Enterprises LLC
8 Park Place CT
Wichita Falls, Texas 76302-1960
Toan_nguyen506@yahoo.com

United States Corporation Agents, Inc.
9900 Spectrum Drive
Austin, Texas 78717

/s/Abelino "Abel" Reyna
Abelino "Abel" Reyna
Bar # 24000087
Patterson & Sheridan LLP
729 Washington Avenue, Suite 200
Waco, Texas 76701
(Tel): 254-777-5248
(Fax): 877-777-8071
(email): areyna@pattersonsheridan.com

Tony V. Pezzano
To Be Admitted Pro Hac Vice
Tony.Pezzano@offitkurman.com

Matthew D. Asbell
To Be Admitted Pro Hac Vice
Matthew.asbell@offitkurman.com

Chintan A. Desai
To Be Admitted Pro Hac Vice
Chintan.desai@offitkurman.com
Offit Kurman, P.A.
590 Madison Ave, 6th Floor
New York, NY 10022
(Tel): 212-545-1900
(Fax): 212-545-1656

*Attorneys for Plaintiffs KF Tea USA Inc. and KF Tea
Franchising LLC*

4881-2338-1654, v. 1